

REMARKS

Entry of this response is respectfully requested.

Applicants respectfully request withdrawal of the finality of the office action of April 29, 2009, because the Examiner has based his rejections of the claims on features not contained in the pending claims. Thus, a new office action that addresses only the features of the presently pending claims should issue and reset the period for response. Nonetheless, applicants respond to the issues raised in the final Office action as set forth below.

Claims 1-20 were rejected under 35 U.S.C. §103(a) over Heidlas. Applicants respectfully traverse.

The presently claimed invention is directed to a method for the selective separation of volatile flavorings from starting materials selected from fruit and vegetable juices and waters produced in fruit and vegetable processing. The starting material is extracted with compressed C₂-C₄ hydrocarbons to extract the aroma substances from the starting material.

The Examiner's attention is drawn to the fact that claim 21 recites that the starting materials are selected from fruit juice, vegetable juice and waters produced in fruit and vegetable processing. Heidlas fails to disclose these starting materials; rather, the examples of Heidlas disclose extraction of ground roasted coffee, granulated roasted cacao and roughly-ground roasted peanuts, which are neither fruit nor vegetables. No extraction of juice or of waters produced by processing fruit or vegetables is disclosed by Heidlas. Since each and every feature of claim 21 is not taught or suggested by Heidlas, the rejection of claim 21 and any claim dependent thereon over Heidlas under 35 U.S.C. § 102 must be withdrawn.

Furthermore, the terms "fat" and "oil", when used in the context of foodstuff, such as fruit and vegetables or the species disclosed by Heidlas, will be understood by a person skilled in the art as referring to fatty acid triglycerides, which are insoluble in water. The term juice, when

used in the context of fruit and vegetables, will be understood by a person skilled in the art as referring to an aqueous liquid obtained by pressing or otherwise processing fruit or vegetable. Olives, referred to by the Examiner in the Office Action, yields olive oil which is considered to be a vegetable oil, but olive oil is not encompassed by the term vegetable juice. The juices and waters of claim 21, therefore differ from the starting substances disclosed by Heidlas.

Additionally, because of the composition of the starting materials disclosed by Heidlas, Heidlas uses a two step process with a first extraction with liquid propane and/or butane, wherein oil and fat is selectively extracted from the starting material, and aroma substances are retained in the initial material, and a subsequent second extraction of the remaining once-extracted starting material with compressed carbon dioxide to extract the aroma substance contained therein. (see Heidlas column 2, lines 31 to 36) Heidlas, therefore, teaches that compressed carbon dioxide is useful for extracting aroma substances and liquid propane and butane to be useful for extracting fat and oil. A person skilled in the art trying to extract a flavoring from a juice or water would, based on Heidlas, try to extract the flavoring with compressed carbon dioxide, and not with a C2-C4 hydrocarbon, because Heidlas teaches that the hydrocarbon is used to extract fat or oil from the starting material, and not a flavoring or aroma substance.

In view of the foregoing, allowance is respectfully requested.

The Commissioner is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 50-0624, under Order No. NY-HUBR-1281-US.

Respectfully submitted

FULBRIGHT & JAWORSKI L.L.P.

By /James R. Crawford/
James R. Crawford
Reg. No. 39,155

666 Fifth Avenue
New York, New York 10103
(212) 318-3000